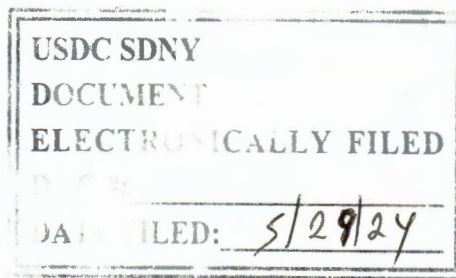


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See rulings
on pages 2 and 3
LLS

FILED VIA CM/ECF

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May 29, 2024

Hon. Louis L. Stanton
U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *Apollo Healthcare Corp. v. Sol de Janeiro USA Inc., et al*, No. 1:22-cv-07719-LLS

Dear Honorable Judge Stanton:

This law firm represents Plaintiff and Counterclaim-defendants Apollo Healthcare Corp. d/b/a Apollo Health and Beauty Care and Costco Wholesale Corp. ("Costco") (collectively, "Apollo") in the above-referenced matter. Pursuant to Your Honor's Individual Rules of Practice in Civil Cases Rule 3.B ("Rule 3.B"), we write to respectfully request that Your Honor issue an order allowing Apollo to file two spreadsheets in the traditional manner in the form of a flash drive rather than through the ECF system. These spreadsheets are being filed as exhibits in connection with Apollo's Opposition to SDJ's¹ Motion to Exclude Dr. Jay and Dr. Simonson Reports and Testimony ("Apollo's Opposition to Exclude Drs. Jay/Simonson"). In addition, Apollo must make redactions to certain highly confidential financial numbers set forth in Apollo's Oppositions to SDJ's Motions to Exclude the Expert Testimony of Thomas J. Gorowsky and Brian Buss ("Apollo's Oppositions to Exclude Gorowsky/Buss"). Finally, Apollo must file two documents under seal that were produced by SDJ as "Highly Confidential – Attorney's Eyes Only" to comply with its contractual obligations pursuant to the Stipulation and Confidentiality Agreement and Protective Order dated May 26, 2023 ("Protective Order") [ECF No. 54]. Apollo will also redact substantive references to these documents from Apollo's Opposition to Exclude Drs. Jay/Simonson.

I. Spreadsheets Need to Be Filed Via Flash Drive.

"Any party unable to comply with the requirement for electronic filing under seal through the ECF system . . . must move for leave of the Court to file in the traditional manner . . ." Rule 3.B. Apollo seeks to file two spreadsheets in the traditional manner.

¹ Defendant Counterclaim Plaintiff Sol de Janeiro USA Inc. and Sol de Janeiro IP, Inc. (collectively "SDJ").

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In connection with Apollo's Opposition to Exclude Drs. Jay/Simonson, Apollo will be referencing two exhibits from Dr. Jay's Datafiles that are Excel spreadsheets from Jay Survey 1 and Jay Survey 2 that have not been previously filed with the Court. One spreadsheet contains 47 columns and 2,090 rows of information, and the other spreadsheet contains 56 columns and 6,819 rows of information. Apollo is unable to print these spreadsheets in a format that could be filed in the ECF system or would be readable for Your Honor. Accordingly, we will need to file these spreadsheets traditionally on a flash drive and provide Your Honor with a flash drive along with the courtesy paper copies of the other filings.

Further, in connection with Apollo's Opposition to Exclude Drs. Jay/Simonson, Apollo intends to reference a spreadsheet that was attached to the Expert Report of Dr. David Neal ("Neal Report") as Exhibit C. This Exhibit to the Neal Report has already been filed with the Court. [ECF Nos. 135-1, 136-1.] However, this spreadsheet as filed is unreadable containing 110 columns and 484 rows of information.

Because the spreadsheet that was part of the lengthy Neal Report but was not substantively referenced in connection with any of the prior motions, Apollo did not provide Your Honor with a flash drive. However, the spreadsheet in Exhibit C will now be substantively referenced in connection with Apollo's Opposition to Exclude Drs. Jay/Simonson so we need to provide Your Honor with a readable copy.

Apollo hereby requests permission to allow us to file these three (3) spreadsheets in native format on a flash drive which will allow Your Honor to search for information and magnify the very small text from Exhibit C that is being referenced in Apollo's Opposition to Exclude Drs. Jay/Simonson.

Granted
Louis L.
Stanton
5/29/24

II. Numbers Related to Highly Confidential Financial Information

Pursuant to this Court's Order dated April 18, 2024 [ECF No. 119], Apollo similarly redacts numbers pertaining to highly confidential financial information of Apollo, Costco and SDJ from Apollo's Oppositions to Exclude Gorowsky/Buss and files this information under seal.

Per this Court's Rule 3.B, Apollo will contemporaneously electronically file the proposed redacted Apollo's Opposition and relate the document to this motion.

III. Materials SDJ Designated Confidential Under The Protective Order

Apollo is including the two documents that SDJ produced as "Highly Confidential" in the litigation under seal to comply with its obligations under the Protective Order. Apollo met and conferred with counsel for SDJ to determine if these documents should remain "Confidential" and/or "Highly Confidential." Counsel for SDJ needed to talk with their client and have not substantively responded regarding these documents as of the time Apollo needed to file this Letter. Apollo takes no position as to whether these documents are confidential or not.

Specifically, SDJ produced the following documents under seal:

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- Survey conducted by Global Consumer & Market Insights: SDJ 2023 (SDJ0003018-332 used in Dr. Jay's depo as Ex. 3); and
- SDJ + Sephora Golden Book 2022 (SDJ0001396-1410)

(See Declaration of Tiffany Blofield in Support of 5/29/24 Letter to File in Traditionally and Seal ¶¶ 3-5 and Exs. A & B.)

In addition to filing these documents under seal, Apollo has redacted the Apollo Opposition to maintain the confidentiality of these documents.

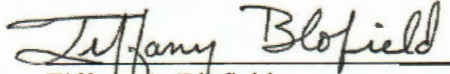
Apollo understands that "[b]ecause a stipulated confidentiality or protective order does not take into account the special (and Constitutional) public interests in access to materials submitted to a court to influence a judicial action, it does not serve as an independent basis for sealing documents submitted in court applications." See Individual Practices Judge Louis L. Stanton at p. 2, ¶ 2. Accordingly, we ask that the Court either maintain the non-financial information produced by SDJ as "Confidential" and/or "Highly Confidential" under seal or order that it not remain under seal thus relieving Apollo of its obligation to keep the materials confidential under the Protective Order.

So Ordered
Louis L. Stanton
5/29/24

Per this Court's Rule 3.B, Apollo will contemporaneously electronically file the proposed sealed documents and redactions to the Opposition and relate these documents to this motion.

We thank Your Honor for your time and attention to this matter.

Respectfully submitted,


Tiffany A. Blofield

*Attorney for Plaintiff/Counterclaim-Defendant
Apollo Healthcare Corp. d/b/a Apollo Health and
Beauty Care and Counterclaim-Defendant Costco
Wholesale Corp.*

Enclosures

cc: All Counsel of Record